

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16**

Portland, Oregon

**NAHC2 OF OREGON, INC.,
d/b/a EASTMORELAND HOSPITAL ^{1/}**

Employer

and

**Case No. 16-RC-10095
(formerly 36-RC-5907)**

OREGON NURSES ASSOCIATION

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:^{2/}

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.^{3/}
3. The labor organization involved claims to represent certain employees of the Employer.^{4/}

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of the Section 9(c)(1) and Section 2(6) and (7) of the Act.^{5/}
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All registered nurses, included charge nurses, working at the Eastmoreland Hospital facility in Portland, Oregon.

EXCLUDED: All other employees, including discharge planners, VIP senior coordinator (business development), infection-control nurse, chief nursing officers, nursing supervisors, nurse managers, assistant nurse manager for senior care, director of quality/risk management, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION^{6/}

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. In this regard, Section 103.20(c) of the Board's Rules and Regulations, as interpreted by the Board, requires employers to notify the Regional Director at least five full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Failure to do so estops employers from filing objections based on nonposting of the election notice. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls.

Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Oregon Nurses Association.

LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list containing the full names and addresses of eligible voters which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Portland Subregional Office, 222 S.W. Columbia Street, Room 401, KOIN Center, Portland, OR 97201-5878, on or before March 26, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570.

This request must be received by the Board in Washington by April 2, 1999.

DATED March 19, 1999, at Fort Worth, Texas.

/s/ Michael Dunn

Michael Dunn, Regional Director
NLRB Region 16

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1. The petition was amended at the hearing to reflect the Employer's correct name.
 2. Both parties submitted post-hearing briefs which were duly considered.
 3. NAHC of Oregon, Inc. d/b/a Woodland Hospital and NAHC2, of Oregon, Inc. d/b/a Eastmoreland Hospital, are Tennessee corporations engaged in the operation of hospitals providing inpatient and outpatient medical care. During the preceding fiscal year, the Employer has derived gross revenues in excess of \$1,000,000 from these operations and have purchased and received for use at their Oregon facilities goods and services valued in excess of \$50,000 directly from suppliers located outside the State of Oregon.
 4. The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.
 5. The Petitioner seeks to represent approximately 82 registered nurses working at the Employer's Eastmoreland Hospital facility in Portland, Oregon. The parties stipulated that a unit composed of registered nurses (full-time with benefits, part-time with benefits, part-time without benefits and per diem), including charge nurses, is appropriate for the purposes of collective bargaining. The parties further stipulated that all on-call/per diem registered nurses employed four hours or more per week in the quarter previous to the eligibility date determined by the Regional Director will be eligible to vote in the election. The parties agreed that nurses classified as discharge planners, VIP senior coordinator (business development), and infection-control nurse do not share a community of interest with the registered nurses and are properly excluded from the bargaining unit. The parties also agreed that chief nursing officers, nursing supervisors, nurse managers, assistant nurse manager for senior care, and the Director of Quality/Risk Management have the authority to hire, fire, discipline and direct employees or to effectively recommend such action and should be excluded from the bargaining unit as supervisors within the meaning of Section 2(11) of the Act.

The sole issue to be determined is whether an appropriate bargaining unit must also include approximately 117 registered nurses working at the Woodland Park Hospital facility, which is also located in Portland.

The record reflects that Eastmoreland Hospital is an osteopathic teaching hospital employing approximately 250-275 health care employees. Eastmoreland has emergency room, medical surgical, rehabilitation, surgical services, senior psychiatric services, occupational therapy, physical therapy, and food services departments. Woodland Park Hospital is a (non-osteopathic) hospital with approximately 300 employees and has emergency room, medical surgical, OB-GYN, senior psychiatric, adolescent psychiatric, physical therapy, occupational therapy, and respiratory therapy departments. The two facilities are located about 5.2 miles apart on opposite ends of town. Each facility is separately licensed and incorporated. Each hospital is accredited independently and maintains separate patient files and OSHA records.

New American Health Care (NAHC) purchased the hospitals on February 1, 1998, and has consolidated management and administrative functions for both facilities. The facilities governed by a single board of trustees, one chief executive officer and a single chief financial officer. The record reflects the two facilities also share a common human resources director, human resources manager, business development director, quality risk manager, infection control manager, pharmacy director, cardiopulmonary manager, patient accounts manager, materials management director, food services manager, and plant operations manager. There is also evidence that nonsupervisory employees other than the registered nursing staff work at both hospitals. The two facilities use common billing and purchasing services.

Employees at both hospitals work under the same policy manual and are subject to identical personnel, administrative, safety, quality assurance, and risk management policies. Both facilities are subject to the same pay scale, shift differentials, performance evaluation process, health insurance benefits, 401(k) benefits, leave policy, and in-house "problem resolution" procedure. Employees at both facilities also receive the same administrative discount for medical services. Payroll functions for both facilities are performed by a single office, but the facilities are paid on alternate weeks. When employees from one facility work at another, they are paid in accordance with their "home facility's" schedule. Both hospitals participate in joint annual picnics, service award luncheons, and various holiday functions.

Although the two facilities are separately licensed and accredited, the Employer advertises them jointly to the public, using the names and addresses of both hospitals. There is a single employment application for jobs at either hospital. All applications for employment are reviewed by the human resources department and referred to the appropriate supervisor in the facility where the opening exists. The supervisor interviews the applicant, then returns the applications to human resources for preemployment functions such as reference checks and drug screenings. The human resources department makes the formal offer of employment. The record reflects that NAHC policy is to post job openings at either hospital at both facilities prior to publicly

advertising for applicants and to give hiring preference to existing employees. The nurse manager in the unit with an opening may request that the employee complete a new application to update relevant information. An employee seeking a transfer must also obtain the written approval of the nurse manager in his/her current unit. The evidence further suggests that jobs may not be posted at both facilities when the job opening is in a department which only exists in one facility, such as the OB-GYN unit at Woodland Park. Both facilities use a standardized code procedure for internal emergencies.

The record reflects that patients at either facility may be referred to the other hospital for services. However, patients are also referred to other facilities not owned by NAHC. Patient's medical records are maintained separately at each facility and are not accessible to staff at the other facility. Each unit typically conducts separate department meetings for staff. Employees' name tags do not list both hospitals, but instead merely list the employee's name and department. Woodland Park's OB-GYN staff wear name tags bearing the employee's picture. The record reflects some procedural differences exist between the two facilities. Eastmoreland Hospital calculates the number of nurses needed using a "census staffing" method based on the number of patients in the hospital. Woodland Park, in contrast, employs an "acuity staffing" method which considers the levels of patients' illnesses in making staffing determination. The record further discloses that the two facilities use distinct methods of charting patient information. Woodland Park uses the Patient Intervention Evaluation (PIE) method while Eastmoreland relies on the Exception Charting method. Nurses at Woodland Park use needleless IV kits while nurses at Eastmoreland use the traditional needle IV system.

NAHC has contracted with another entity, Horizon, to provide senior psychiatric services at both hospitals. The nurses in these units at both facilities are under the supervision of a nurse manager and assistant manager employed by Horizon. Although the Employer suggests that Horizon and NAHC are joint or single employers with respect to these individuals, the evidence does not conclusively establish this relationship. The record does not disclose the number of nurses working in these units. The record reflects that a nursing supervisor from Eastmoreland also worked as a nursing supervisor at Woodland Park on October 6, 1998. The record further reveals that two nurses transferred from Woodland Park to Eastmoreland and one nurse transferred from Eastmoreland to Woodland Park since NAHC purchased both facilities. In October 1998, five nurses from Eastmoreland worked at Woodland Park, and six Woodland Park nurses worked at Eastmoreland. The record does not establish, however, the number of hours worked by any of these individuals. The record reflects that each hospital unit maintains a separate resource pool of "on call" per diem nurses to fill in when regular full-time and part-time staff nurses are unavailable. If the nurse manager in charge of a unit exhausts the resource pool, NAHC's informal policy calls for the manager to contact supervisors at the other facility to see if any nurses are available. The record reflects, however, that some nurse managers contact a nursing agency rather than call the other facility.

With the exception of the senior psychiatric services units, nurses at each facility receive separate daily supervision from their respective nurse managers. The nurse managers in each unit report to nursing supervisors who are responsible for the entire hospital during

a particular shift. The record reflects that nurse managers have the authority to initiate disciplinary action and may suspend nurses under their supervision pending investigation without obtaining permission from NAHC's human resources department. Written disciplinary action and terminations, as well as performance evaluations and recommendations for pay increases, are submitted through the nursing supervisors to the human resources department for review and processing.

In ***Manor Healthcare Corp.***, 285 NLRB 224 (1987), the Board extended its presumption that a single-facility unit "is presumptively appropriate for the purposes of collective bargaining even though a broader unit might also be appropriate." 285 NLRB at 225. The factors to be considered in determining whether the presumption that the single-facility unit is appropriate has been rebutted are 1) geographic proximity, 2) administrative centralization, 3) functional integration, 4) common supervision, 5) bargaining history, and 6) employee interchange and transfer. ***Visiting Nurses Association of Central Illinois***, 324 NLRB 55 (1997); ***Passavant Retirement & Health Center, Inc.***, 313 NLRB 1216, 1218 (1994); ***Children's Hospital of San Francisco; California Pacific Medical Center***, 312 NLRB 920, 928 (1993); ***West Jersey Health System***, 293 NLRB 749, 751 (1989).

Applying these factors to the instant case, I find the evidence is not sufficient to overcome the presumption that a bargaining unit composed solely of Eastmoreland registered nurses is appropriate. The Eastmoreland and Woodland Park facilities are not geographically distant in terms of actual miles but nonetheless are located on opposite ends of the city. While there is extensive administrative centralization between the two facilities, the record reflects that NAHC has been flexible in its centralization when its payroll capabilities were not sufficient to allow employees at both facilities to be paid on the same day. There is no evidence that NAHC's centralized procedures and general policies would interfere or conflict with the individual needs of either facility. The record reflects that functional integration between the two hospitals is limited to purchasing, laundry and linen service contracts, sharing of some specialized equipment, and other areas which are not directly related to the specific patient-care duties of the registered nurses. Each facility separately accredited and is able to perform its normal patient-care responsibilities independently. The only evidence of common daily supervision of nurses is in the senior psychiatric services area. As noted above, the record does not establish the number of employees in these units, nor does it clearly establish the relationship between the Horizon employees in charge of the senior psychiatric program to NAHC. The parties stipulated that there is no bargaining history regarding the employees in either facility. Finally, and most significantly, the record does not demonstrate substantial employee interchange and/or transfer between the two hospitals. The record disclosed that two to three of Eastmoreland's 82 registered nurses worked extra shifts at Woodland Park and one to seven of Woodland Park's 117 registered nurses worked extra shifts at Eastmoreland on a monthly basis in 1998. As noted above, there have been only three permanent transfers between the two facilities. The Board has determined that employee interchange and separate supervision is an important factor in making unit determinations. ***Gerry Homes d/b/a Heritage Park***

Health Care Center, 324 NLRB 447, 452 (1997); *Passavant Retirement and Health Center*, supra.

The Employer argues that the centralized administration and the similarity of employee skills, functions, and working conditions between the two facilities require the inclusion of the Woodland Park nurses in the bargaining unit. The cases cited by the Employer in support of this argument, *West Jersey Health System*, supra, *R & D Trucking*, 327 NLRB No. 103 (1999), and *NLRB v. Chicago Health & Tennis Clubs, Inc.*, 567 F.2d 331 (7th Cir. 1977) all included evidence of significant and substantial interchange of employees between facilities. In *West Jersey Health System*, the facilities involved were accredited as one system and the record contained evidence of 147 permanent transfers and 250 interfacility assignments. Moreover, the evidence demonstrated that a significant number of employees sought in the bargaining unit routinely rotated between facilities and/or regularly worked at more than one facility. In the instant case, the record reflects that very few unit employees work at both facilities. The employees in *R & D Trucking* had no separate daily supervision and significant interchange between facilities. *Chicago Health* involved several retail stores with common supervision and frequent transfers between facilities. Accordingly, these cases are distinguishable from the case before me.

In finding a single-facility unit is appropriate, I have considered the Congressional concerns regarding the effect of unit proliferation on the health care industry set forth in *Manor Healthcare*, supra. The employer argues that failure to include the nurses from both hospitals into one bargaining unit may threaten patient care. The record, however, does not support this contention. Similar to the facilities in *Manor Healthcare*, Eastmoreland and Woodland Park engage in patient care independently from one another. Day to day labor and staffing matters are also dealt with by individual nurse managers at each facility, subject to ultimate approval by the centralized human resources department. Although the record indicates that nurses transferring from one facility to another would not lose seniority, the evidence does not establish that seniority is considered by the NAHC in transfer, layoff, or recall decisions. The record does not establish that the policy of allowing nurses to transfer from one facility to another without a break in seniority or benefits would be disruptive. The Employer's contention regarding effects of picketing at Woodland Park in the event of a strike at Eastmoreland is entirely speculative and is not supported by record evidence. Moreover, a labor dispute in a unit composed of nurses from both facilities might prove more disruptive to patient care. Therefore, the single unit presumption is not rebutted by this argument. *Gerry Homes d/b/a Heritage Park Health Care Center*, 324 NLRB at 452 (1997).

In summary, while there is substantial administrative centralization of operations of Eastmoreland and Woodland Park and some functional integration in areas not directly related to patient care, the record does not demonstrate regular common supervision or significant interchange and/or transfer of employees between the two hospitals. Further, there is no evidence of any potential for a disruption in patient care at one facility resulting from a labor dispute at the other. Based on these factors, I find that a unit composed solely of Eastmoreland registered nurses is appropriate for the purposes of

bargaining. *Children's Hospital of San Francisco; California Pacific Medical Center,*
supra.

6. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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